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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 07/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
16/086460

Applicant(s)  
LO

Examiner  
S. WEINSTEIN

Group Art Unit  
1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☐ Responsive to communication(s) filed on \_\_\_\_\_
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-13 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-13 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
  - ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
  - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))
- \*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_ ☐ Interview Summary, PTO-413
- ☒ Notice of Reference(s) Cited, PTO-892 ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948 ☐ Other \_\_\_\_\_

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 8, 9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Martin (1,710,369).

In regard to claim 1, Martin discloses a device that would be inherently capable of making tofu with stuffed material inside the tofu (because Martin discloses a mold that is capable of containing a preform and any castable, solidifiable liquid material would be capable of being added to the mold so that the solidifiable material would be stuffed with the edible perform) wherein the device of Martin comprises at least one bar (e.g., 7) that would be capable of holding the stuffed material and for being held by the user, a container with at least one compartment defined in the container, the at least one compartment having a recess to position the bar inside the compartment (since the bars extend into the wall) and wherein the compartment is configured to have a volume larger than the stuffed material so that there is still room for the castable, solidifiable material and the device would be capable of functioning like this with soy bean milk as well. This is all claim 1 positively recites. In regard to claim 2, Martin ('369) also discloses a cover (i.e., 31) that engages the container. In regard to claim 4, Martin ('369) also discloses a pair of recesses in opposite faces of the container. It is noted that claims 8, 9 and 11 are anticipated by Martin ('369) for the reasons given above.

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These claims are also redundant to claims 1, 2 and 4 since they contain all the same elements as claims 1, 2, and 4.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 8-13 are rejected under 35 USC 112, second paragraph as being indefinite. Claim 8 recites "a device as claimed in the method as claimed in claim 1 ...". Claim 1 is a device not a method, so it is not clear what applicant intended by this language. If applicant intended to make these claims dependent on the method claim, then these claims would be improper since one could infringe the dependent claims without infringing the claims from which they depend.

Claims 1, <sup>3</sup>8, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Schnaier (2,003,612).

In regard to claim 1, Schnaier discloses a device that would be inherently capable of making tofu with stuffed material inside the tofu. This is because, Schnaier discloses a bar and a container wherein the container has a compartment and a recess in the compartment (in the bottom-claim 3). The container of Schnaier is for receiving a castable, solidifiable liquid. That is, Schnaier discloses a mold. The bar (11) of Schnaier would be capable of receiving a stuffing material and the container would be capable of receiving soybean milk. This is all claims 1 and 3 positively recite.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 6, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Martin (1,710,369) or Schnaier (2,003,612) in view of Hoyt (4,001,440) and Odagiri (Jp3-272669).

Claims 5 and 6 recite that the compartment is shaped like a fish or cow. It is, of course, notoriously old to impart to a mold any shape that one desires to be imparted to the castable, solidifiable material to be placed in the mold. Hoyt can be relied on to show a mold with a recognizable shape and Odagiri discloses providing food shaped like animals, persons, vehicles, etc.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Martin (1,710,369) in view of Fukuoka (Jp 56-48863), Obata et al (Jp 2-255054) and Igari (Jp 60-16566), or vice versa, i.e. Fukuoka, Obata et al and Igari, in view of Martin, both further in view of Fukuoka (Jp 60-2158) and Sugisawa et al (GB 2163035).

In regard to claim 7, Martin discloses making a stuffed food product comprising positioning a stuffed material onto a bar such that both ends of the bar "are still able for holding", placing the bar with the stuffed material in a recess of a compartment of a container and "inputting" the food product to be stuffed into the compartment in the container to surround the stuffed material. Claim 7 differs from Martin in the particular material to be stuffed (i.e., tofu) and its attendant method of preparation prior to filling in the container. Martin ('369) seems to be a general teaching that would fairly teach one of ordinary skill in the art that any castable, solidifiable liquid could be stuffed in this manner. Martin ('369) specifically mentions cake, jelly, ice cream, candy and other

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edibles. In any case, Fukuoka as further evidenced by Obata et al and Igari disclose it was well established in the art to provide tofu that contains other edible products, by solidifying the tofu with the other edible products therein and to modify Martin and substitute one conventional solidifiable food known to contain other edibles for another conventional solidifiable food which has been known to contain other edibles for its art recognized and applicants intended function would have been unequivocally obvious. Similarly, employing Fukuoka as the primary reference, Fukuoka discloses a food product within tofu but the abstract is not clear how this is done. Martin teaches one conventional method is to place the stuffing material on a pin in a mold and then add the castable, solidifiable material and to modify Fukuoka and employ this conventional technique in making a stuffed product for its art recognized and applicant's intended function would have been obvious. Claim 7 further recites the conventional steps of making tofu. That is, immersing soybeans in water, grinding, boiling, cooling and adding coagulating agent are all conventional steps as evidenced, e.g., by Fukuoka (Jp '2158) and Sugisawa et al (GB '035) and to modify the combination and employ the tofu making steps would therefore have been obvious. The particular time/temperature variables are seen to have been obvious routine determinations, if not already disclosed by the art taken as a whole.

The remainder of the references cited on the USPTO 892 forms are cited as pertinent art.

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Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is 703-308-0650. The examiner can generally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-0661.

S. Weinstein/mn  
July 7, 2003

*Steve Weinstein*  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1761  
7/8/03